

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TANESHA REMBERT,	}	
Plaintiff,	}	
	}	CIVIL ACTION FILE NO.:
vs.	}	1:12-CV-02811-JOF-JSA
	}	
MOUNT VERNON INTERNAL	}	
MEDICINE; LINDA BOWER,	}	
DR. SHARON P. TINANOFF,	}	
DR. CHARLES D. COHN,	}	
DR. JEFFERY P. POLEKOFF,	}	
and its assigns, successors in interest,	}	
et al.	}	
Defendants.	}	
	/	

PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION TO DISMISS
PLAINTIFF’S COMPLAINT AND BRIEF IN SUPPORT

COMES NOW Plaintiff and responds to Defendants’ Motion to Dismiss Plaintiff’s Complaint and Brief in Support.

I. Facts

On August 14, 2012, after having filed an EEOC claim and received a determination from EEOC that her case did not fall within the statutory purview of the fifteen (15) person employee requirement, Plaintiff filed the instant law suit. In her complaint, Plaintiff alleged Defendants violated her right to contract, a right

guaranteed under 42 U.S.C. §1981, and her right to equal protection under the 14th Amendment. (Doc. 1- p. 1 & 40).

On October 16, 2012, Defendants filed a Motion to Dismiss in which they contend Plaintiff has failed to state a claim upon which relief can be granted. They argue Plaintiff's complaint is an EEOC Title VII cause of action; that Plaintiff cannot allege a Title VII violation because the Defendant employer did not employ the requisite fifteen (15) employees at the termination of Plaintiff's employment.

II. ARGUMENT AND CITATION OF AUTHORITY

Defendants' Motion to Dismiss deliberately misrepresents Plaintiff's pleading under 42 U.S.C. §1981, and it inaccurately recites Plaintiff's complaint under Title VII. It fails to meet the standard for a dismissal.

According to Fed.R.Civ.P8(a), a complaint requires only, 1) a short and plain statement of the grounds upon which the court's jurisdiction depends, 2) a short and plain statement of the claims that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests, and 3) a demand for judgment for relief; Wagner v. Daewood Heavy Industries America Corporation, et al, 289 F.3d 1268, 1270 (11th Cir. 2002).

The Eleventh Circuit District Court has repeatedly declared that "a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim

which would entitle him to relief.” Marsh, et al. v. Butler County, Alabama, et al., 268 F.3d 1014, 1023, n4 (11th Cir. 2001).

There exist procedural and statutory differences within Title VII and 42 U.S.C. §1981. These differences are not determinative in this action. This action is plead under 42 U.S.C. §1981, specifically, and should not fail on a Motion to Dismiss because it does not fall within the statutory and procedural mandates of Title VII. Plaintiff’s Complaint falls squarely within the present code as amended by the Civil Rights Act of 1991.

III. CONCLUSION

Based on the foregoing, Plaintiff prays that the Court deny Defendants’ Motion to Dismiss.

Submitted this 30th day of October, 2012,

/s/ Valerie V. Vie
Valerie V. Vie

5682 Palazzo Way, Suite 102
Douglasville, Georgia 30134
Georgia Bar No. 727617
Tel: 770-949-1102
Fax: 770-949-1103
valerievie@hotmail.com

/s/ Lucinda Jones
Lucinda Jones

8491 Hospital Drive, No. 109
Douglasville, Georgia 30134
Georgia Bar No. 402509
Tele: 770-874-2994
Fax: 770-942-2051
advocate.lucinda@gmail.com

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Defendants.	}	
	/	

CERTIFICATE OF SERVICE

This is to certify that a true copy of Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's Complaint and Brief in Support, by electronic efile to:

Richard N. Sheinis
Georgia Bar No. 639865
Nichole L. Hair
Georgia Bar No. 474182
Hall Booth Smith & Slover, P.C.
191 Peachtree Street, NE
Suite 2900
Atlanta, Georgia 30303
404-954-5000 (Office)
404-954-5020 (Fax)

Submitted, this 30th day of October, 2012.

/s/ Valerie V. Vie

Valerie V. Vie

5682 Palazzo Way, Suite 102

Douglasville, Georgia 30134

Georgia Bar No. 727617

Tel: 770-040-1102

Fax: 770-949-1103

valerievie@hotmail.com

/s/ Lucinda Jones

Lucinda Jones

8491 Hospital Drive, No. 109

Douglasville, Georgia 30134

Georgia Bar No. 402509

Tele: 770-874-2994

Fax: 770-942-2051

advocate.lucinda@gmail.com